

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PRIME FINANCIAL, INC.,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:10-cv-00646

DIMOND INTERNATIONAL, INC., et al.,

Defendants.

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's Verified Petition Regarding Rule 4(m), Federal Rules of Civil Procedure and Service of Process on Defendants (Dkt. 13), which was referred to the undersigned by the Honorable Janet T. Neff for report and recommendation under 28 U.S.C. § 636(b)(1)(B). In the petition, filed in response to a notice of impending dismissal for failure to effect service, Plaintiff stated only that a consent judgment had been entered between Plaintiff and all of the non taxing authority defendants prior to removal of the case to this court. On November 16, 2010, Plaintiff was ordered to file in this matter a copy of the state court consent judgment between Plaintiff and all of the non taxing authority defendants by November 30, 2010. It has not. As such, it is hereby recommended that the petition (Dkt. 13) be denied and that the complaint be dismissed as to defendants Dimond International, Inc., Russell Dimond, Shirley A. Dimond, Shirley A. Dimond Revocable Living Trust u/a/d 6/6/00, Dimond Machinery

Company and Russell Dimond Revocable Living Trust u/a/d 6/6/00 for Plaintiff's failure to serve them with the summons and complaint in this matter.

Respectfully submitted,

Date: December 1, 2010

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).